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## Letter Ruling 79-46: Massachusetts Contractor with Out-of-State Customers

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November 7, 1979

You represent a heating and plumbing contractor ("Contractor") located in Massachusetts and have requested rulings on the sales tax consequences of Contractor's transactions with its customers located in the State of New Hampshire.

The facts of the transactions and our rulings thereon are as follows:

1. Contractor enters into a contract with a New Hampshire customer for a quoted price which includes both materials and labor. The charge for materials and labor are not separately stated on the invoice to the customer.

Contractor is the consumer of the materials used in the performance of this contract and is taxable upon its purchases of the materials.

2. Contractor enters into a contract quoting a separate price for the materials and the labor, both of which appear on the invoice. The customer is located in New Hampshire, the contract is executed in New Hampshire, the labor is performed in New Hampshire, and the materials are delivered to the New Hampshire construction site from Massachusetts.

On the given facts the Contractor is the consumer of the materials which he uses in the performance of the contract. The fact that he separately quotes the materials portion of the charge for his work does not change his liability for sales tax on his purchases.

If, however, the Contractor were acting as a vendor of tangible personal property and were selling finished products which required no significant further fabrication, but simply installation, assembling or connecting services then such a transaction would not be regarded as a construction contract and the contractor would not be treated as a consumer of such finished products; he could purchase the products for resale, and his sale and delivery thereof in New Hampshire would not be taxable.

3. Contractor delivers and bills for materials only to New Hampshire customers. There is no contract labor involved.

Contractor is regarded as a vendor of the materials sold, his purchase of these materials is for resale and not subject to sales tax. His sale and delivery of tangible personal property to customers located in New Hampshire is exempt from Massachusetts sales tax.

4. Contractor sells materials only to New Hampshire customers who take delivery in Massachusetts.

These sales are subject to Massachusetts sales tax.

5. A lump-sum contract is entered into in New Hampshire with a New Hampshire customer; the goods are drop-shipped by an independent supplier to New Hampshire and all the work is performed in New Hampshire.

No purchase, sale or use of the tangible personal property in Massachusetts by Contractor is involved and no Massachusetts sales or use taxes are incurred.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers  
Commissioner of Revenue

LJH/JJW/jmcd

LR 79-46